

Senate Bill 418

By: Senators Balfour of the 9th, Hawkins of the 49th and Cowser of the 46th

**AS PASSED**

**AN ACT**

To amend Title 25 of the Official Code of Georgia Annotated, relating to fire protection and safety, so as to prohibit the sale of cigarettes unless the manufacturer of those cigarettes certifies to the Safety Fire Commissioner that the cigarettes have been tested by the manufacturer and meet certain standards; to provide for a short title; to provide for definitions; to provide for standards for testing of cigarettes; to provide for written certification; to provide for required marking of cigarettes; to provide for forfeiture; to provide civil penalties; to provide for inspections; to provide for preemption; to provide for related matters; to provide effective dates; to repeal conflicting laws; and for other purposes.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

**SECTION 1.**

Title 25 of the Official Code of Georgia Annotated, relating to fire protection and safety, is amended by adding a new chapter as follows:

**"CHAPTER 14**

**25-14-1.**

This chapter shall be known and may be cited as the 'Georgia Fire Safety Standard and Firefighter Protection Act.'

**25-14-2.**

As used in this chapter, the term:

(1) 'Agent' means any person authorized by the commissioner of revenue to purchase and affix stamps on packages of cigarettes.

(2) 'Cigarette' means:

(A) Any roll for smoking made wholly or in part of tobacco when the cover of the roll is paper or any substance other than tobacco; or

(B) Any roll for smoking wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette as described in subparagraph (A) of this paragraph.

(3) 'Commissioner' means the Safety Fire Commissioner.

(4) 'Manufacturer' means:

(A) Any entity which manufactures, makes, produces, or causes to be produced cigarettes sold in this state or cigarettes said entity intends to be sold in this state; or

(B) The first purchaser of cigarettes manufactured anywhere that intends to resell such cigarettes in this state regardless of whether the original manufacturer, maker, or producer intends such cigarettes to be sold in the United States; or

(C) Any entity which becomes a successor of an entity described in subparagraph (A) or (B) of this paragraph.

(4.1) 'New York Fire Safety Standards for Cigarettes' means those New York Fire Safety Standards for Cigarettes in effect on April 1, 2008.

(5) 'Quality control and quality assurance program' means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment related problems do not affect the results of the testing. Such a program ensures that the testing repeatability remains within the required repeatability values stated in paragraph (6) of subsection (b) of Code Section 25-14-3 for all test trials used to certify cigarettes in accordance with this chapter.

(6) 'Repeatability' means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

(7) 'Retail dealer' means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.

(8) 'Sale' means any sale, transfer, exchange, theft, barter, gift, or offer for sale and distribution in any manner or by any means whatever.

(9) 'Sell' means to sell or to offer or agree to do the same.

(10) 'Wholesale dealer' means any person that is not a manufacturer who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale. A wholesale dealer is also any person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person.

25-14-3.

(a) Except as provided in subsection (h) of this Code section, no cigarettes may be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this Code section, a written certification has been filed by the manufacturer in accordance with Code Section 25-14-4, and the cigarettes have been marked in accordance with Code Section 25-14-5.

(b)(1) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials (ASTM) Standard E2187-04, 'Standard Test Method for Measuring the Ignition Strength of Cigarettes.'

(2) Testing shall be conducted on ten layers of filter paper.

(3) No more than 25 percent of the cigarettes tested in a test trial in accordance with this Code section shall exhibit full-length burns. Forty replicate tests shall comprise a complete test trial for each cigarette tested.

(4) The performance standard required by this Code section shall only be applied to a complete test trial.

(5) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization (ISO) or other comparable accreditation standard required by the commissioner.

(6) Laboratories conducting testing in accordance with this Code section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19.

(7) This Code section does not require additional testing if cigarettes are tested consistent with this chapter for any other purpose.

(8) Testing performed or sponsored by the commissioner to determine a cigarette's compliance with the performance standard required shall be conducted in accordance with this Code section.

(c) Each cigarette listed in a certification submitted pursuant to Code Section 25-14-4 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this Code section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located

at least 15 millimeters from the lighting end and ten millimeters from the filter end of the tobacco column, or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(d) A manufacturer of a cigarette that the commissioner determines cannot be tested in accordance with the test method prescribed in paragraph (1) of subsection (b) of this Code section shall propose a test method and performance standard for the cigarette to the commissioner. Upon approval of the proposed test method and a determination by the commissioner that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in paragraph (3) of subsection (b) of this Code section, the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to Code Section 25-14-4. If the commissioner determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this chapter, and the commissioner finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this Code section, then the commissioner shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the commissioner demonstrates a reasonable basis why the alternative test should not be accepted under this chapter. All other applicable requirements of this Code section shall apply to the manufacturer.

(e) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years, and shall make copies of these reports available to the commissioner and the Attorney General upon written request. Any manufacturer who fails to make copies of these reports available within 60 days of receiving a written request shall be subject to a civil penalty not to exceed \$10,000.00 for each day after the sixtieth day that the manufacturer does not make such copies available.

(f) The commissioner may adopt a subsequent ASTM Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that such subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the performance standard in paragraph (3) of subsection (b) of this Code section.

(g) The commissioner shall review the effectiveness of this Code section and report his or her findings every three years to the General Assembly and, if appropriate, recommendations for legislation to improve the effectiveness of this chapter. The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each three-year period.

(h) The requirements of subsection (a) of this Code section shall not prohibit:

(1) Wholesale or retail dealers from selling their existing inventory of cigarettes on or after January 1, 2010, if the wholesale or retailer dealer can establish that state tax stamps were affixed to the cigarettes prior to January 1, 2010, and if the wholesale or retailer dealer can establish that the inventory was purchased prior to January 1, 2010, in comparable quantity to the inventory purchased during the same period of the prior year; or

(2) The sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, the term 'consumer testing' shall mean an assessment of cigarettes that is conducted by a manufacturer, or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment.

(i) This chapter shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.

25-14-4.

(a) Each manufacturer shall submit to the commissioner a written certification attesting that:

(1) Each cigarette listed in the certification has been tested in accordance with Code Section 25-14-3; and

(2) Each cigarette listed in the certification meets the performance standard set forth in paragraph (3) of subsection (b) of Code Section 25-14-3.

(b) Each cigarette listed in the certification shall be described with the following information:

- (1) Brand or trade name on the package;
- (2) Style, such as light or ultra light;
- (3) Length in millimeters;
- (4) Circumference in millimeters;
- (5) Flavor, such as menthol or chocolate, if applicable;
- (6) Filter or nonfilter;

- (7) Package description, such as soft pack or box;
  - (8) Marking approved in accordance with Code Section 25-14-5;
  - (9) The name, address, and telephone number of the laboratory, if different from the manufacturer that conducted the test; and
  - (10) The date that the testing occurred.
- (c) The certifications shall also be made available to the Attorney General for purposes consistent with this chapter and to the commissioner of revenue for the purposes of ensuring compliance with this Code section.
- (d) Each cigarette certified under this Code section shall be recertified every three years.
- (e) For each cigarette listed in a certification, a manufacturer shall pay to the commissioner a fee of \$250.00.
- (f) If a manufacturer has certified a cigarette pursuant to this Code section and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this chapter, that cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in Code Section 25-14-3 and maintains records of that retesting as required by Code Section 25-14-3. Any altered cigarette which does not meet the performance standard set forth in Code Section 25-14-3 shall not be sold in this state.

25-14-5.

- (a) Cigarettes that are certified by a manufacturer in accordance with Code Section 25-14-4 shall be marked to indicate compliance with the requirements of Code Section 25-14-3. The marking shall be in eight-point type or larger and consist of:
- (1) Modification of the universal product code to include a visible mark printed at or around the area of the universal product code. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the universal product code;
  - (2) Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette packaging or cellophane wrap; or
  - (3) Printed, stamped, engraved, or embossed text on the cigarette packaging or cellophane wrap that indicates that the cigarettes meet Georgia standards.
- (b) A manufacturer shall use only one marking and shall apply this marking uniformly for all packages, including but not limited to packs, cartons, and cases, and brands marketed by that manufacturer.

- (c) The commissioner shall be notified as to the marking that is selected.
- (d) Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the commissioner for approval. Upon receipt of the request, the commissioner shall approve or disapprove the marking offered. The commissioner shall approve:
  - (1) Any marking in use and approved for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes; or
  - (2) The letters 'FSC,' which signifies Fire Standards Compliant, appearing in eight-point type or larger and permanently printed, stamped, engraved, or embossed on the package at or near the universal product code.

Proposed markings shall be deemed approved if the commissioner fails to act within ten business days of receiving a request for approval.

- (e) No manufacturer shall modify its approved marking unless the modification has been approved by the commissioner in accordance with this Code section.
- (f) Manufacturers certifying cigarettes in accordance with Code Section 25-14-4 shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes and shall also provide sufficient copies of an illustration of the package marking utilized by the manufacturer pursuant to this Code section for each retail dealer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the commissioner, the commissioner of revenue, the Attorney General, and their employees to inspect markings of cigarette packaging marked in accordance with this Code section.

#### 25-14-6.

- (a) A manufacturer, wholesale dealer, agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of Code Section 25-14-3, for a first offense shall be subject to a civil penalty not to exceed \$100.00 dollars for each pack of such cigarettes sold or offered for sale, provided that in no case shall the penalty against any such person or entity exceed \$100,000.00 during any 30 day period.
- (b) A retail dealer who knowingly sells or offers to sell cigarettes in violation of Code Section 25-14-3 shall be subject to a civil penalty not to exceed \$100.00 for each pack of such cigarettes, provided that in no case shall the penalty against any retail dealer exceed \$25,000.00 during any 30 day period.
- (c) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that

knowingly makes a false certification pursuant to Code Section 25-14-4 shall be subject to a civil penalty of at least \$75,000.00 and not to exceed \$250,000.00 for each such false certification.

(d) Any person violating any other provision in this chapter shall be subject to a civil penalty for a first offense not to exceed \$1,000.00, and for a subsequent offense subject to a civil penalty not to exceed \$5,000.00, for each such violation.

(e) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by Code Section 25-14-3 shall be subject to forfeiture and, upon forfeiture, shall be destroyed; provided, however, that prior to the destruction of any cigarette pursuant to this Code section, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

(f) In addition to any other remedy provided by law, the commissioner or Attorney General may file an action in superior court for a violation of this chapter, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of this chapter, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this chapter or of rules or regulations adopted under this chapter constitutes a separate civil violation for which the commissioner or Attorney General may obtain relief.

(g) Whenever any law enforcement personnel or duly authorized representative of the commissioner or Attorney General shall discover any cigarettes that have not been marked in the manner required Code Section 25-14-5, such personnel is hereby authorized and empowered to seize and take possession of such cigarettes. Such cigarettes shall be turned over to the commissioner of revenue and shall be forfeited to the state. Cigarettes seized pursuant to this subsection shall be destroyed; provided, however, that prior to the destruction of any cigarette seized pursuant to this subsection, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

25-14-7.

(a) The commissioner may promulgate rules and regulations, pursuant to Chapter 13 of Title 50, necessary to effectuate the purposes of this chapter.

(b) The commissioner of revenue in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under Chapter 11 of Title 48, may inspect such cigarettes to determine if the cigarettes are marked as required by Code Section 25-14-5. If the cigarettes are not marked as required, the commissioner of revenue shall notify the commissioner.



25-14-8.

To enforce the provisions of this chapter, the Attorney General and the commissioner, their duly authorized representatives, and other law enforcement personnel shall be authorized to examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale shall be directed and required to give the Attorney General and the commissioner, their duly authorized representatives, and other law enforcement personnel the means, facilities, and opportunity for the examinations authorized by this Code section.

25-14-9.

Nothing in this chapter shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of Code Section 25-14-3 if the cigarettes are not for sale in this state or are packaged for sale outside the United States, and that person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this state.

25-14-10.

This chapter shall cease to be applicable if federal reduced cigarette ignition propensity standards that preempt this chapter are enacted.

25-14-11.

If, after the date specified in paragraph (4.1) of Code Section 25-14-2, the New York safety standards are changed, then the commissioner shall suggest proposed legislation to the chairpersons of the appropriate standing committees of the General Assembly as designated by the presiding officer of each house. Such proposed legislation shall contain provisions necessary to bring paragraph (4.1) of Code Section 25-14-2 into accordance with the New York safety standards."

## **SECTION 2.**

This Act shall preempt and supersede and shall prohibit the enactment of any local laws, ordinances, rules, and regulations by the governing authority of any county or municipal corporation concerning the testing of cigarettes, the performance standards of cigarettes, or

the certification that cigarettes have been manufactured in compliance with testing and performance standards.

### **SECTION 3.**

(a) Except as otherwise provided in subsection (b) of this section, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

(b) Section 1 of this Act shall become effective on January 1, 2010.

### **SECTION 4.**

All laws and parts of laws in conflict with this Act are repealed.